

Top US court affirms state sales tax on Amazon (Update)

December 2 2013

The US Supreme Court upheld Monday New York state's law requiring Amazon to collect sales tax on items sold online, the latest decision in a long battle over e-commerce taxes.

The top US court dismissed without comment an appeal from Amazon and online retailer Overstock.com, after the New York state Court of Appeals ruled the tax constitutional in March.

The decision requires Amazon to collect and remit sales taxes for goods sold to residents of New York state, an important battleground over the question of taxes for online sales.

State governments and brick-and-mortar retailers have long argued that online retailers should be required to collect sales taxes, to avoid giving an unfair advantage to e-commerce sites.

Amazon and others have argued that the US constitution bars taxes on interstate commerce, and prior court decisions have held that retailers must collect sales taxes only in states where they have a physical presence.

The New York state case appears to narrow the tax exemption by defining the referring website partners of Amazon and Overstock as "an in-state sales force."

Because Amazon and Overstock pay commissions on these sales from in-

state website operators, New York is entitled to collect taxes, the state court ruled in March, in a case which dates back to 2008.

"The world has changed dramatically in the last two decades, and it may be that the physical presence test is outdated," the state court opinion said.

It added that "active, in-state solicitation" establishes a presence in the state which requires the collection of sales taxes.

The referring partners are often coupon websites or bloggers who can earn a commission on sales by sending online shoppers to the retailer websites.

Amazon currently collects sales taxes in several states, and policies of other retailers vary from state to state.

Amazon has made deals in some states to delay the collection of sales taxes in exchange for establishing distribution centers which create jobs in those states.

An Amazon spokesman, reacting to Monday's ruling, said in a statement: "The Supreme Court already has addressed the sales tax issue, saying in (an earlier ruling) that Congress can and should act to resolve it."

The statement added that "The Marketplace Fairness Act now pending before Congress would protect states' rights to make their own revenue policy choices while allowing them to collect more than a fraction of the revenue that's already owed."

Overstock executive vice chairman Jonathan Johnson told AFP that the court ruling would have no impact on the retailer because it had terminated relationships with New York-based referral sites.

"This will not affect Overstock," he said.

"We're hoped that the US Supreme Court would look at this case and reaffirm what physical presence meant. But it chose not to, so we will continue to run our business the way we have in the past and collect sales taxes where we have a physical presence."

Senator Heidi Heitkamp of North Dakota welcomed the court decision and added: "It's past time that we create a federal system to require online retailers to collect and remit sales tax, just like local shops are required to do."

The Michigan Retailers Association also hailed the move, saying: "Retailers all across Michigan applaud the action by the US Supreme Court because it removes an excuse that critics have used to hold up passage of legislation to remove the six percent price advantage Michigan government gives to out-of-state online retailers."

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Citation: Top US court affirms state sales tax on Amazon (Update) (2013, December 2) retrieved 14 July 2024 from <https://phys.org/news/2013-12-justices-wont-appeal-ny-internet.html>

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